

The maximum number of members of any council of a lieutenant-governor hereafter constituted is thirty. See the Indian Councils Act, 1909, Sch. I.

Section 3 of the Government of India Act, 1912 (2 & 3 Geo. V, c. 6), empowers the Governor-General in Council to establish a legislative council for any chief commissionership, by proclamation, adapting the provisions of the Indian Councils Acts relating to lieutenant-governorships. A legislative council was established for Assam on November 14, 1912, and for the Central Provinces in November, 1913.

Procedure
at meet-
ings of
lieuten-
ant-gover-
nor's
council.
[24 & 25
Vict. c.
67, s. 45.
9 Edw.
VII, c. 4,
s. 4.]

75.—(1) At every meeting of a lieutenant-governor's council the lieutenant-governor, or in his absence the vice-president of his council, or, in the absence of the vice-president, the member of the council highest in official rank among those holding office under the Crown, presides (a).

(2) The legislative powers of the council may be exercised only at meetings at which the lieutenant-governor or some other member holding office under the Crown, and a specified number of additional members of the council, are present (b).

(3) In case of difference of opinion at any meeting of the lieutenant-governor's council, if there is an equality of votes, the lieutenant-governor or other person presiding has a second or casting vote.

(a) The Indian Councils Act, 1909, requires the appointment of a vice-president to take the place of the lieutenant-governor in his absence.

(b) Under the Regulations of 1909 as amended in 1912 there are required to be present, in order to form a quorum, ten additional members in the case of the Council of Bihar and Orissa and ten members in the case of the United Provinces, eight in the case of the Punjab and Assam, and six in the case of Burma.

Powers of
local
legisla-
ture.
[24 & 25
Vict. c. 67,
ss. 42, 43,
48.
55 & 56
Vict. c.
14, s. 5.]

76.—(1) The local legislature of any province in India may, subject to the provisions of this Digest, make laws for the peace and good government of the territories for the time being constituting that province (a).

(2) The local legislature of any province may, with the previous sanction of the governor-general, but not otherwise, repeal or amend as to that province any law or regulation made by any authority in India other than that local legislature (b).

(3) The local legislature of any province may not, without the previous sanction of the governor-general, make or take into consideration any law—

- (a) affecting the public debt of India, or the customs duties or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the government of India ; or
- (b) regulating any of the current coin, or the issue of any bills, notes, or other paper currency ; or
- (c) regulating the conveyance of letters by the post office or messages by the electric telegraph within the province ; or
- (d) altering in any way the Indian Penal Code (c) ; or
- (e) affecting the religion or religious rites or usages of any class of His Majesty's subjects in India ; or
- (f) affecting the discipline or maintenance of any part of His Majesty's naval or military forces ; or
- (g) regulating patents or copyright ; or
- (h) affecting the relations of the Government with foreign princes or States.

(4) The local legislature of any province has not power to make any law affecting any Act of Parliament for the time being in force in the province (d).

(5) Provided that an Act or a provision of an Act made by a local legislature, and subsequently assented to by the governor-general in pursuance of the provisions contained in this Digest, is not to be deemed invalid by reason only of its requiring the previous sanction of the governor-general under this section.

(a) The Governor-General in Council has concurrent power to legislate for a province under a local legislature. In practice, however, this power is not, unless under very exceptional circumstances, exercised as to matters within the competency of the local legislature.

(b) Under the Act of 1861 a local legislature could not alter an Act of the Government of India passed after the Act of 1861 came into operation. Consequently the sphere of operations of the local legis-

latures was often inconveniently restricted by the numerous Acts passed by the Governor-General in Council since 1861, particularly by such general Acts as the Evidence Act and the Easements Act. The provision reproduced in sub-section (2) was inserted in the Act of 1892 for the purpose of removing this inconvenience.

(c) Sir Charles Wood, when Secretary of State for India, in a dispatch dated December 1, 1862, addressed the Government of India as follows :

‘Cases, no doubt, will occasionally occur when special legislation by the local Governments for offences not included in the Penal Code will be required. In these cases the general rule should be to place such offences under penalties already assigned in the Code to acts of a similar character. This mode of legislation, though an addition to, cannot be deemed an alteration of the Penal Code; but if any deviation is considered necessary, then the law requires that your previous sanction should be obtained.

‘It was the intention of Her Majesty’s Government that, except in local and peculiar circumstances, the Code should contain the whole body of penal legislation, and that all additions or modifications suggested by experience should from time to time be incorporated in it. And the duty of maintaining this uniformity, of course, devolves upon your Excellency in Council.

‘As a general rule, for the guidance of the local councils, it would probably be expedient—and this appears also to be your own view—that all bills containing penal clauses should be submitted for your previous sanction.’

In consequence of this dispatch all Bills introduced into a local legislature and containing penal clauses are required to be sent to the Government of India for consideration as to the penal clauses.

As to what would amount to an alteration of the Penal Code, see Minutes by Sir H. S. Maine, Nos. 5 and 6.

(d) Among the Acts which a local legislature cannot ‘affect’ is the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), and, consequently, questions have arisen as to the validity of laws affecting the jurisdiction of the chartered high court. It has been held that the Governor of Bombay in Council has power to pass Acts limiting or regulating the jurisdiction of the courts established by the local legislature, and that such Acts are not void merely because their indirect effect may be to increase or diminish the occasions for the exercise of the appellate jurisdiction of the high court (*Premshankar Raghunathji v. Government of Bombay*, 8 Bom. H. C. Rep. A. C. I. 195). Also that the Bombay Legislative Council has authority to make laws regulating the rights and obligations of the subjects of the Bombay Government, but not to affect the authority of the high court in dealing with those rights and obligations (*Collector of Thana v. Bhaskar Mahadev Rheth*, I. L. R., 8 Bom. 264).

The power of the Governor-General in Council to affect by legislation the prerogative of the Crown is expressly recognized by statute (see below, s. 79). It may perhaps be inferred that the local legislatures

do not possess this power. But see *Bell v. Municipality of Madras*, 25 Mad. 474.

77.—(1) At a legislative meeting of the Governor of Bengal in Council, of the Governor of Madras in Council, of the Governor of Bombay in Council, or of the Lieutenant-Governor of Bihar and Orissa in Council, and at a meeting of any other Lieutenant-Governor or any Chief Commissioner in Council, no business may be transacted other than the consideration of measures introduced [or proposed to be introduced] (a) into the council for the purpose of enactment, or the alteration of rules for the conduct of business at legislative meetings (b).

Business
at legis-
lative
meetings.
[24 & 25
Vict. c. 67,
ss. 37,
38, 48.
9 Edw.
VII, c. 4,
s. 5.]

(2) At any such meeting no motion may be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced [or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business] (a).

(3) Provided that the Governors in Council of Bengal, Madras, and Bombay respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council or Chief Commissioner of every province must, with the sanction of the Governor-General in Council, make rules for authorizing at any legislative meeting of their respective councils the discussion of the annual financial statement of their respective local Governments and of any matter of general public interest and the asking of questions, but under such conditions and restrictions as may in the rules applicable to those councils respectively be prescribed.

(4) It is not lawful for any member of any such council to introduce, without the previous sanction of the governor or lieutenant-governor or chief commissioner, any measure affecting the public revenues of the province or imposing any charge on those revenues.

(5) Rules for the conduct of business at legislative meetings of the Governor of Bengal in Council, of the Governor of

Madras in Council, of the Governor of Bombay in Council, or of any Lieutenant-Governor or Chief Commissioner in Council, may be made and amended at legislative meetings of the council, subject to the assent of that governor or lieutenant-governor or chief commissioner, but any such rule may be disallowed by the Governor-General in Council, and if so disallowed shall have no effect: Provided that rules made under this section with respect to the discussion of the annual financial statement or of any matter of general public interest or the asking of questions are not to be subject to amendment as aforesaid.

(a) The words in square brackets are not in the Act of 1861, but represent the existing practice.

(b) The range of business at meetings of these legislative councils has been materially extended by s. 5 of the Indian Councils Act, 1909, and the rules made under it.

Assent to
Acts of
local legis-
latures.
[24 & 25
Vict. c. 67,
ss. 39, 40,
41, 48.]

78.—(1) When an Act has been passed at a meeting of the council of a governor, lieutenant-governor or chief commissioner, the governor or lieutenant-governor or chief commissioner, whether he was or was not present in council at the passing of the Act, may declare that he assents to or withholds his assent from the Act.

(2) If he withholds his assent from any such Act, the Act has no effect.

(3) If he assents to any such Act he must forthwith send an authentic copy of the Act to the governor-general, and the Act has not validity until the governor-general has assented thereto, and that assent has been signified by the governor-general to, and published by, the governor, lieutenant-governor, or chief commissioner.

(4) Where the governor-general withholds his assent from any such Act he must signify to the governor, lieutenant-governor, or chief commissioner in writing his reason for so withholding his assent (a).

(5) When any such Act has been assented to by the governor-general, he must send to the Secretary of State

an authentic copy thereof, and it is lawful for His Majesty to signify through the Secretary of State in Council his disallowance of any such Act.

(6) Where the disallowance of any such Act has been so signified, the governor or lieutenant-governor or chief commissioner must forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, becomes void accordingly.

(a) Assent has been withheld on one or more of the following grounds :

(1) that the principle or policy of the Act, or of some particular provision of the Act, is unsound ;

(2) that the Act, or some provision of the Act, is *ultra vires* of the local legislature ;

(3) that the Act is defective in form.

With respect to (3), the recent practice of the Government of India has been to avoid criticism of the drafting of local Bills or Acts.

Validity of Indian Laws.

79. A law made by any authority in India is not invalid solely on account of any one or more of the following reasons:

(1) in the case of a law made by the Governor-General in Council, because it affects the prerogative of the Crown (a);

(2) in the case of any law, because the requisite proportion of members not holding office under the Crown in India was not complete at the date of its introduction to the Council or its enactment ;

(3) in the case of a law made by a local legislature, because it confers on magistrates, being justices of the peace, the same jurisdiction over European British subjects as that legislature by Acts duly made could lawfully confer on magistrates in the exercise of authority over natives in the like cases (b).

(a) This saving does not appear to apply to the local legislatures. See note (d) on s. 76. As to the prerogatives of the Crown, see note (a) on s. 36.

(b) An Indian Act (XXII of 1870) was passed to confirm certain previous Acts of the Madras and Bombay legislatures which had been adjudged invalid on the ground of interference with the rights of European British subjects. See *R. v. Reay*. 7 Bom. Cr 6, and the

Removal of doubts as to validity of certain laws.
[24 & 25 Vict. c. 67, ss. 14, 24, 33, 48, 34 & 35 Vict. c. 34, s. 1.]

speeches of Mr. FitzJames Stephen in the Legislative Council in 1870, Proceedings, pp. 362, 384. As Indian legislation could not confer on local legislatures the requisite power in the future, it was conferred by an Act of Parliament in 1871 (34 & 35 Vict. c. 34).

PART VII.

SALARIES, LEAVE OF ABSENCE, VACATION OF OFFICE, TEMPORARY APPOINTMENTS, &C

Salaries
and allow-
ances of
governor-
general
and cer-
tain other
officials in
India.
[33 Geo.
III, c.
52, s. 32.
3 & 4
Will. IV,
c. 85, ss.
76, 77-
16 & 17
Vict. c.
95, s. 35.
24 & 25
Vict. c.
67, s. 4.
43 Vict. c.
3, ss. 2, 4.]

80.—(1) There are to be paid to the Governor-General of India and to the other persons mentioned in the First Schedule to this Digest, out of the revenues of India, such salaries, not exceeding in any case the maximum specified in that behalf in the said schedule, and such allowances (if any) for equipment and voyage, as the Secretary of State in Council may by order fix in that behalf, and subject to or in default of any such order, as are now payable.

(2) Provided as follows :

(a) An order affecting salaries of members of the Governor-General's council may not be made without the concurrence of a majority of votes at a meeting of the Council of India ;

(b) If any person to whom this section applies holds or enjoys any pension or salary, or any office of profit under the Crown or under any public office, his salary under this section must be reduced by the amount of the pension, salary, or profits of office so held or enjoyed by him ;

(c) Nothing in the provisions of this section with respect to allowances authorizes the imposition of any additional charge on the revenues of India.

(3) The salary payable to a person under this section commences on his taking upon himself the execution of the office to which the salary is attached, and is to be the whole profit or advantage which he enjoys during his continuance in the office (a).

(a) The salaries of the governor-general, governors, and members of council were fixed at what is shown as the maximum in the First Schedule by 3 & 4 Will. IV, c. 85, s. 76 ; but were there declared to be

subject to such reduction as the Court of Directors, with the sanction of the Board of Control, might at any time think fit.

The salary of the commander-in-chief and of lieutenant-governors was fixed at 100,000 Company's rupees by 16 & 17 Vict. c. 95, s. 35, but the salaries so fixed were declared to be subject to the provisions and regulations of the Government of India Act, 1833 (3 Will. IV, c. 85), concerning the salaries thereby appointed.

The view adopted in this Digest is that these salaries can be fixed at any amount not exceeding the amounts specified in the Acts of 1833 and 1853. The power to reduce has been exercised more than once, but it is open to argument whether the power to reduce involves a power to raise subsequently.

The allowances for equipment and voyage of the officers mentioned in the First Schedule (and also of the bishops and archdeacons of Calcutta, Madras, and Bombay) may, under the Indian Salaries and Allowances Act, 1880 (43 Vict. c. 3), be fixed, altered or abolished by the Secretary of State in Council. But nothing in that Act was to authorize the imposition of any additional charge on the revenues of India.

Sub-section (3) is taken from s. 76 of the Act of 1833.

Under 33 Geo. III, c. 52, s. 32, a commander-in-chief was not to be entitled to any salary or emolument as member of council, unless it was specially granted by the Court of Directors.

The salaries and allowances now paid under the enactments reproduced in this Digest are as follows :

<i>Officer.</i>	<i>Salary.</i>	<i>Equipment and Voyage.¹</i>
	Rs.	£
Viceroy and Governor-General	2,50,800	5,000
Governors of Bengal, Bombay, and Madras	1,20,000	1,000
Commander-in-Chief	1,00,000	500
Lieutenant-Governor	1,00,000	—
Member of Governor-General's Council	80,000	300
Member of Council, Bengal, Madras, and Bombay	64,000	—
Chief Justice, Calcutta	72,000	1
Puisne Judges, Calcutta	48,000	
Chief Justice, Madras	60,000	
Puisne Judges, Madras	48,000	300
Chief Justice, Bombay	60,000	1
Puisne Judges, Bombay	48,000	
Bishop of Calcutta	45,980	
Bishops of Madras and Bombay	25,600	300
Archdeacon, Calcutta	Pay as Senior Chaplains + Rs. 3,200	
„ Madras		
„ Bombay		

¹ These allowances are not payable unless the officer is resident in Europe at the time of the appointment. Smaller allowances are payable if the officer is then resident elsewhere.

Leave of
absence to
members
of council.
[24 & 25
Vict. c.
67, s. 26.]

81.—(1) The Governor-General in Council and the Governors of Bengal, Madras, and Bombay in Council respectively may grant to any of the ordinary members of their respective councils leave of absence under medical certificate for a period not exceeding six months.

(2) Where a member of council obtains leave of absence in pursuance of this section, he retains his office during his absence, and on his return and resumption of his duties is entitled to receive half his salary for the period of his absence; but if his absence exceeds six months his office becomes vacant.

Provision
as to
absence
from India
or pro-
vince.
[33 Geo.
III, c. 52,
s. 37.
7 Geo. IV,
c. 56, s. 3.
3 & 4
Will. IV,
c. 85, s. 79.
7 Will. IV,
and 1 Vict.
c. 47.]

82.—(1) If the Governor-General, the Governor of Bengal, Madras or Bombay, or the commander-in-chief of His Majesty's forces in India, and, subject to the foregoing provisions of this Digest as to leave of absence, if any ordinary member of the council of the Governor-General, or of the Governor of Bengal, Madras or Bombay departs from India intending to return to Europe, his office thereupon becomes vacant (a).

[(2) No act or declaration of any governor-general, governor, or member of council, other than as aforesaid, except a declaration in writing under hand and seal, delivered to a secretary to the Government of India or to the chief secretary of the presidency wherein he is, in order to its being recorded, shall be deemed or held as a resignation or surrender of his office (b).]

[(3) If the governor-general, or any ordinary member of the governor-general's council, leaves India otherwise than in the known actual service of the Crown, and if any governor, lieutenant-governor, or ordinary member of a governor's council leaves the presidency to which he belongs otherwise than as aforesaid, his salary and allowances are not payable during his absence to any person for his use (c).]

[(4) If any such officer, not having proceeded or intended to proceed to Europe, dies during his absence and whilst intending to return to India or to his presidency, his salary and

allowances, will, subject to any rules in that behalf made by the Secretary of State in Council, be paid to his personal representatives.

(5) If any such officer does not return to India or his presidency, or returns to Europe, his salary and allowances will be deemed to have ceased on the day of his leaving India or his presidency (d).]

(a) Under the Act of 1793 33 Geo. III, c. 52, s. 37, 'the departure from India of any governor-general, governor, member of council, or commander-in-chief, with intent to return to Europe, shall be deemed in law a resignation and avoidance of his office,' and his arrival in any part of Europe is to be a sufficient indication of such intent. The Act of 1833 (3 & 4 Will. IV, c. 85, s. 79) enacts in almost identical words that the return to Europe, or departure from India with intent to return to Europe, of any governor-general of India, governor, member of council, or commander-in-chief, is to be deemed in law a resignation and avoidance of his office or employment. These provisions have been qualified as to members of council by the power to grant sick leave under the Act of 1861 (see s. 82). But when the Duke of Connaught wished to visit England in the Jubilee year during his term of office as commander-in-chief in the Bombay Presidency a special Act had to be passed (50 Vict. sess. 2, c. 10).

(b) This sub-section reproduces a provision in s. 79 of the Act of 1833, which was copied from a similar provision in the Act of 1793. The provision possibly arose out of the circumstances attending Warren Hastings's resignation in 1776 (see above, p. 64), but does not appear to be observed in practice.

(c) This sub-section is intended to reproduce as far as practicable the effect of the enactments still in force on this subject, but their language is not clear, and was framed with reference to circumstances which no longer exist.

Section 37 of the Act of 1793 enacts that 'if any such governor-general or any other officer whatever in the service of the said Company shall quit or leave the presidency or settlement to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning back to his station at such presidency or settlement, or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his quitting such presidency or settlement, any law or usage to the contrary notwithstanding.'

An Act of 1826 (7 Geo. IV, c. 56, s. 3), after referring to this provision, enacts that the 'Company may cause payment to be made to the representatives of officers in their service, civil or military, who, having

quitted or left their stations and not having proceeded or intended to proceed to Europe, intending to return to their stations, have died or may hereafter happen to die during their temporary absence within the limits of the said Company's charter or at the Cape of Good Hope, of such salaries and allowances, or of such portions of salaries and allowances, as the officers so dying would have been entitled to if they had returned to their station.'

Section 79 of the Act of 1833 enacts that 'if any such governor-general or member of council of India shall leave the said territories, or if any governor or other officer whatever in the service of the said Company shall leave the presidency to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office shall not be paid or payable during his absence to any agent or other person for his use, and in the event of his not returning or of his coming to Europe, his salary and allowances shall be deemed to have ceased from the day of his leaving the said territories or the presidency to which he may have belonged. Provided that it shall be lawful for the said Company to make such payment as is now by law permitted to be made to the representatives of their officers or servants who, having left their stations intending to return thereto, shall die during their absence.'

An Act of 1837 (7 Will. IV, c. 47) enacts that these provisions in the Acts of 1793 and 1833 are 'not to extend to the case of any officer or servant of the Company under the rank of governor or member of council who shall quit the presidency to which he shall belong in consequence of sickness under such rules as may from time to time be established by the Governor-General of India in Council, or by the Governor in Council of such presidency, as the case may be, and who shall proceed to any place within the limits of the East India Company's charter, or to the Mauritius, or to the island of St. Helena, nor to the case of any officer or servant of the said Company under such rank as aforesaid who, with the permission of the Government of the presidency to which he shall belong, shall quit such presidency in order to proceed to another presidency for the purpose of embarking thence for Europe, until the departure of such officer or servant from such last-mentioned presidency with a view to return to Europe, so as that the port of such departure for Europe shall not be more distant from the place which he shall have quitted in his own presidency than any port of embarkation within such presidency.'

These rules were to require the approval of the Court of Directors and the Board of Control.

Finally, s. 32 of the Act of 1853 (see s. 89 of the Digest) declared that 'Nothing in any enactment now in force, or any charter relating to the said Company, shall be taken to prevent the establishment, by the Court of Directors (under the direction and control of the said Board of Commissioners), from time to time, of any regulations which they may deem expedient in relation to the absence on sick leave or furlough of all or any officers and persons in the service of the said Company in

India, or receiving salaries from the said Company there, under which they respectively may be authorized to repair to and reside in Europe or elsewhere out of the limits of the said Company's charter, without forfeiture of pay or salary, during the times and under the circumstances during and under which they may now be permitted (while absent from their duty) to reside in places out of India within the limits of the said Company's charter, or during such times and under such circumstances as by such regulations may be permitted.'

The powers conferred by the Act of 1853 would seem to override the previous provisions as to salary, but not the previous provisions as to vacation of office.

(d) The last two sub-sections are inserted as a rough reproduction of the Act of 1826, and of an enactment in the Act of 1853, but it is doubtful whether these enactments are still law, and whether they are not superseded by regulations under the Act of 1853.

83.—(1) His Majesty may by warrant under his Sign Manual appoint any person conditionally to succeed to any of the offices of governor-general, governor, or ordinary member of the council of the governor-general or of the governor of Bengal, Madras, or Bombay, in the event of the office becoming vacant, or in any other event or contingency expressed in the appointment, and revoke any such conditional appointment (a). (conditional appointments. [3 & 4 Will. IV, c. 85, s. 61, 24 & 25 Vict. c. 67, ss. 2, 5.]

-(2) A person so conditionally appointed is not entitled to any authority, salary, or emolument appertaining to the office to which he is appointed, until he is in the actual possession of the office.

(a) By 3 & 4 Will. IV, c. 85, the power of making conditional appointments to the offices of governor-general, governor, and member of the Council of Madras and Bombay was vested in the Court of Directors, and consequently is now vested in the Secretary of State (21 & 22 Vict. c. 106, s. 3).

Under 24 & 25 Vict. c. 67, s. 5, the power of making conditional appointments to the office of ordinary member of the governor-general's council is apparently exercisable either by the King, or by the Secretary of State with the concurrence of a majority of the Council of India.

In practice, the power is in all these cases exercised by the King only.

84.—(1) If any person entitled under a conditional appointment to succeed to the office of governor-general Power for governor-general to

exercise
powers
before
taking
seat.

[21 & 22
Vict. c.
106, s. 63.]

on the occurrence of a vacancy therein, or appointed absolutely to that office, is in India on or after the occurrence of the vacancy, or on or after the receipt of the absolute appointment, as the case may be, and thinks it necessary to exercise the powers of governor-general before he takes his seat in council, he may make known by proclamation his appointment, and his intention to assume the office of governor-general.

(2) After the proclamation, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council, except the power of making laws at legislative meetings.

(3) All acts done in the council after the date of the proclamation, but before the communication thereof to the council, are valid, subject, nevertheless, to revocation or alteration by the person who has so assumed the office of governor-general.

(4) When the office of governor-general is assumed under the foregoing provision, if there is at any time before the governor-general takes his seat in council no president of the council authorized to preside at legislative meetings, the vice-president or, if he is absent, the senior ordinary member of council then present presides therein, with the same powers as the governor-general would have had if present.

Provision
for tem-
porary
vacancy in
office of
governor-
general.
[3 & 4
Will. IV,
c. 85, s. 62,
24 & 25
Vict. c.
67, ss. 50,

85.—(1) If a vacancy occurs in the office of governor-general when there is no conditional or other successor in India to supply the vacancy, the Governor of Bengal, the Governor of Madras, or the Governor of Bombay, whichever has been first appointed to the office of governor by His Majesty, is to hold and execute the office of governor-general until a successor arrives or until some person in India is duly appointed thereto.

51.
Edw.
VII, c. 4,
s. 4.

(2) Every such acting governor-general, while acting as such, has and may exercise all the rights and powers of the

office of governor-general, and is entitled to receive the emoluments and advantages appertaining to the office, forgoing the salary and allowances appertaining to his office of governor; and his office of governor is supplied for the time during which he acts as governor-general in the manner directed by law with respect to vacancies in the office of governor.

2 & 3
(Geo. V,
c. 6, s. 4.]

(3) If, on the vacancy occurring, it appears to the governor who by virtue of this provision holds and executes the office of governor-general necessary to exercise the powers thereof before he takes his seat in council, he may make known by proclamation his appointment, and his intention to assume the office of governor-general, and thereupon the provisions of this Digest respecting the assumption of the office by a person conditionally appointed to succeed thereto apply.

(4) Until such a governor has assumed the office of governor-general, if no conditional or other successor is on the spot to supply the vacancy, the vice-president or in his absence, the senior ordinary member of council, holds the office of governor-general until the vacancy is filled in accordance with the provisions of this Digest (a).

(5) Every member of council so acting as governor-general, while so acting, has and may exercise all the rights and powers of the office of governor-general, and is entitled to receive the emoluments and advantages appertaining to the office, forgoing his salary and allowances as member of council for that period.

(a) Thus, on Lord Mayo's death in 1872, Sir John Strachey acted as governor-general from February 9 until the arrival of Lord Napier of Merchistoun on February 23.

86.—(1) If a vacancy occurs in the office of Governor of Bengal, Madras, or Bombay when no conditional or other successor is on the spot to supply the vacancy, the vice-president, or, in his absence, the senior ordinary member of the governor's council, or if there is no council, the chief secretary to the local Government (a), holds and executes the

Provision
for tem-
porary
vacancy in
office of
Governor
of Bengal,
Madras,
or Bom-
bay.

[3 & 4
Will. IV,
c. 85, s.
63.
9 Edw.
VII, c. 4,
s. 4.]

office of governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting governor is, while acting as such, entitled to receive the emoluments and advantages appertaining to the office of governor, forgoing the salary and allowances appertaining to his office of member of council or secretary.

(a) The Act of 1833 contained a power to abolish these councils.

Provision
for tem-
porary
vacancy in
office of
ordinary
member of
council.
[24 & 25
Vict. c.
67, s. 27.]

87.—(1) If a vacancy occurs in the office of an ordinary member of the council of the governor-general, or of the council of the Governor of Bengal, Madras, or Bombay, when no person conditionally appointed to succeed thereto is present on the spot, the vacancy is to be supplied by the appointment of the Governor-General in Council or Governor in Council, as the case may be.

(2) Until a successor arrives the person so appointed executes the office to which he has been appointed, and has and exercises all the rights and powers thereof, and is entitled to receive the emoluments and advantages appertaining to the office during his continuance therein, forgoing all salaries and allowances by him held and enjoyed at the time of his being appointed to that office.

(3) If any ordinary member of any of the said councils is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave, and if any person has been conditionally appointed as aforesaid, the place of the member so incapable or absent is to be supplied by that person.

(4) If no person conditionally appointed to succeed to the office is on the spot, the Governor-General in Council or Governor in Council, as the case may be, is to appoint some person to be a temporary member of council, and, until the return to duty (a) of the member so incapable or absent, the person conditionally or temporarily appointed executes the office to which he has been appointed, and has and exercises all the rights and powers thereof, and receives half

the salary of the member of council whose place he supplies, and also half the salary of any other office he may hold, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Governor-General in Council or Governor in Council, whichever may appoint to the office.

(5) Provided as follows :—

(a) No person may be appointed a temporary member of council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by the temporary appointment ; and

(b) If the Secretary of State informs the governor-general that it is not the intention of His Majesty to fill a vacancy in the council of the governor-general, no temporary appointment may be made under this section to fill the vacancy, and if any such temporary appointment has been made before the date of the receipt of the information by the governor-general, the tenure of the person temporarily appointed ceases from that date. [37 & 38
Vict c.
91, s. 2.]

(a) The words 'to duty' are not in the Act, but seem to express the intention.

88.—(1) An additional member of the council of the governor-general or of a governor, or a member for legislative purposes of the council of a lieutenant-governor or chief commissioner, may resign his office to the governor-general, governor, lieutenant-governor, or chief commissioner, and on the acceptance of the resignation the office becomes vacant. Vacancies
amongst
legislative
members
of council.
[24 & 25
Vict. c.
67, ss. 12,
31,
55 & 56
Vict. c.
14, s. 4
(1).]

(2) If any such member is absent from India or unable to attend to the duties of his office for a period of two consecutive months, the governor-general, governor, lieutenant-governor or chief commissioner, as the case may be, may declare by a notification published in the Government Gazette, that the seat in council of that member has become vacant.

The filling of vacancies is now regulated by the Regulations of November 15, 1909 (as amended in 1912), made under the Indian Councils Act, 1909.

Leave on
furlough.
[16 & 17
Vict. c.
95, s. 32.]

89. The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make regulations as to the absence on sick leave or furlough of persons in the service of the Crown in India, and the terms as to continuance or diminution of pay, salary, and allowances on which any such sick leave or furlough may be granted.

Power to
make regu-
lations as
to Indian
appoint-
ments.
[3 & 4
Will. IV,
c. 85, s. 78.
21 & 22
Vict. c.
106, ss.
30, 37.]

90. The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make regulations for distributing between the several authorities in India the power of making appointments to and promotions in offices, commands, and employments under the Crown in India.

PART VIII.

THE INDIAN CIVIL SERVICE.

No dis-
abilities in
respect of
religion,
colour, or
place of
birth.
[3 & 4
Will. IV,
c. 85,
s. 17.]

91. No native of British India, nor any natural-born subject of His Majesty resident therein, is, by reason only of his religion, place of birth, descent, or colour, or any of them, disabled from holding any place, office, or employment under His Majesty in India

This reproduces s. 87 of the Act of 1833, with the substitution of 'British India' for 'the said territories,' and 'His Majesty in India' for 'the said Company.' See the comments on this enactment in pars. 103-109 of the dispatch of December 10, 1834.

Regula-
tions for
admission
to civil
service.
[21 & 22
Vict. c.
106, s. 32.]

92.—(1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make regulations for the examination of natural-born subjects of His Majesty desirous of becoming candidates for appointment to the Indian Civil Service

(2) The regulations prescribe the age and qualifications of the candidates, and the subjects of examination.

(3) Every regulation made in pursuance of this section must be forthwith laid before Parliament.

(4) The candidates certified to be entitled under the regulations must be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Indian Civil Service by the Secretary of State in Council (a).

(a) The civil service referred to in these sections is the service which used to be known as the covenanted civil service, but which, under the rules framed in pursuance of Sir Charles Archibson's Commission, is usually designated the Indian Civil Service.

Where a child of a father or mother who has been naturalized under the Naturalization Act, 1870 (33 & 34 Vict. c. 14), has during infancy become resident with the father or mother in any part of the United Kingdom or with the father while in the service of the Crown out of the United Kingdom, he is, by virtue of s. 10 (5) of that Act, a naturalized British subject, and is entitled to be treated under the enactment reproduced by this clause as if he were a natural-born British subject. The expression includes a native of British India, but would, apparently, not include a subject of a Native State in India.

93. Subject to the provisions of this Digest, all vacancies happening in any of the offices specified or referred to in the Second Schedule to this Digest, and all such offices which may be created hereafter, must be filled from amongst the members of the Indian Civil Service.

Offices reserved to civil servants. [24 & 25 Vict. c. 54, s. 2.]

The provision of the Act of 1793 as to filling vacancies from among members belonging to the same presidency was repealed by 2 & 3 Geo. V, c. 6, s. 4.

94.—(1) The authorities in India by whom appointments are made to offices in the Indian Civil Service may appoint any native of India of proved merit and ability to any such office, although he has not been admitted to that service in accordance with the foregoing provisions of this Digest.

Power to appoint natives of India to reserved offices. [33 & 34 Vict. c. 3, s. 6.]

(2) Every such appointment must be made subject to such rules as may be prescribed by the Governor-General in Council, and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) For the purposes of this section the expression 'native of India' includes any person born and domiciled in British

India, of parents habitually resident in British India, and not established there for temporary purposes only; and the Governor-General in Council may by resolution define and limit the qualification of natives of India thus expressed; but every resolution made by him for that purpose will be subject to the sanction of the Secretary of State in Council, and will not have force until it has been laid for thirty days before both Houses of Parliament.

The enactment reproduced by this section is not very clearly expressed, and runs as follows:—

‘Whereas it is expedient that additional facilities should be given for the employment of natives in India, of proved merit and ability, in the civil service of Her Majesty in India: Be it enacted, that nothing in the Government of India Act, 1858, or in the Indian Civil Service Act, 1861, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places, and employments in the civil service of Her Majesty in India from appointing any native of India to any such office, place, or employment, although such native shall not have been admitted to the said Civil Service of India in manner in s. 32 of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present; and that for the purpose of this Act the words “natives of India” shall include any person born or domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only; and that it shall be lawful for the Governor-General in Council to define and limit from time to time the qualification of natives of India thus expressed; provided that every resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.’

For the history of the successive rules made under this section, see above, p. 150. The expression ‘native of India’ as defined by the section has been construed as including persons born or domiciled in a Native State.

Power to
make pro-
visional
appoint-
ments in
certain
cases.
[24 & 25
Vict. c.
54, ss. 3,
4.

95.—(1) Where it appears to the authority in India by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India, and who has, before his appointment, fulfilled

all the tests (if any) which would be imposed in the like case on a member of that service.

1 & 2
Geo. V,
c. 18, s. 1.]

(2) Every such appointment is provisional only, and must forthwith be reported to the Secretary of State in Council, with the special reasons for making it; and unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of votes at a meeting of the Council of India, and within twelve months from the date of the appointment notifies such approval to the authority by whom the appointment was made, the appointment must be cancelled.

PART IX.

THE INDIAN HIGH COURTS.

Constitution.

96.—(1) (a) Each high court consists of a chief justice, and as many other judges, not exceeding nineteen (b), as His Majesty may think fit to appoint.

Constitu-
tion of
high
courts.
124 & 25
Vict. c.
104, ss. 2,
19
1 & 2
Geo. V,
c. 18, s. 1.]

(2) A judge of a high court must be—

(a) A barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(b) A member of the Civil Service of India of not less than ten years' standing, and having for at least three years served as or exercised the powers of a district judge; or

(c) A person having held judicial office not inferior to that of a subordinate judge, or a judge of a small cause court, for a period of not less than five years; or

(d) A person having been a pleader (c) of a high court for a period of not less than ten years.

(3) Provided that not less than one-third of the judges of a high court, including the chief justice, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Civil Service of India.

(a) There are four chartered high courts: at Calcutta, Madras, Bombay, and Allahabad. By s. 2 of the Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18) power is now given to establish additional chartered high courts.

(b) There is power in all cases to raise the number to this maximum. The Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18) has raised the maximum, including the chief justice, to 20 (s. 1), and given power to appoint additional temporary judges (s. 3).

(c) The word 'pleader' in the enactment reproduced by this section apparently includes every one who has for ten years been allowed to 'plead' in the Indian sense, i. e. to act as a barrister in the high court, though not a barrister or member of the Faculty of Advocates.

97.—(1) Every judge of a high court holds his office during His Majesty's pleasure (a).

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in the case of any other high court to the local Government of the province in which the high court is established.

(a) As to tenure during pleasure, see the note on s. 21 above.

98.—(1) The chief justice of a high court has rank and precedence before the other judges of the same court

(2) All the other judges of a high court have rank and precedence according to the seniority of their appointments, unless otherwise provided by the terms of their appointment.

99. The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the chief justices and judges of the several high courts, and from time to time alter them, but any such alteration does not affect the salary of any judge appointed before the date thereof.

For existing salaries and allowances, see note on s. 80.

100.—(1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, is to appoint one of the judges of the same high court to perform the duties of chief justice of

the court until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires (a). Vict. c. 104, s. 7.]

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council or local Government, as the case may be, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the court, and the person so appointed may sit and perform the duties of a judge of the court until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or local Government sees cause to cancel the appointment of the acting judge (b).

(a) Apparently the person appointed to act for the chief justice need not be a barrister-judge, though the chief justice himself must be a barrister. See s. 96 (3) above.

(b) The appointment remains in force until the occurrence of one of the contingencies mentioned in this sub-section, and hence cannot be made for a specified time. Probably the 'acting judge' referred to at the end of the sub-section is the judge acting as chief justice referred to above. There is no limit of time within which the appointment must be made. See *Rao Balwant Singh v. Ram Kishori* L. R. 25 I. A. 54, 70

Jurisdiction

101.—(1) Subject to any law made by the Governor-General in Council (a), the several high courts have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in Jurisdiction of high courts. 113 Geo. III, c. 63, ss. 13, 14. 21 Geo. III, c. 70, s. 8. 33 Geo. III, c. 52, s. 156.

37 Geo. III, c. 142, s. 11.
39 & 40 Geo. III, c. 79, ss. 2, 5.
4 Geo. IV, c. 71, ss. 7, 17.
24 & 25 Vict. c. 104, s. 9.]

them by charter or letters patent, and subject to the provisions of any such law, charter or letters patent, all such jurisdiction, powers, and authority as were vested in any of the courts in the same presidency abolished by the Indian High Courts Act, 1861, at the date of their abolition (b).

(2) Each of the high courts at Calcutta, Madras, and Bombay is a court of record and a court of oyer and terminer and jail delivery for the territories under its jurisdiction.

(3) Subject to any law made by the Governor-General in Council, the said high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force (c).

(a) This power is reserved by s. 9 of the Indian High Courts Act, 1861.

(b) The jurisdiction of the chartered high courts in India is based partly on their charters and partly on parliamentary enactments applying either to the high courts themselves or to their predecessors.

The charters are to be found in the *Statutory Rules and Orders Revised*, vol. vi.

The statutory enactments still unrepealed with respect to the jurisdiction of the high court are as follows :—

By s. 13 of the Regulating Act of 1773 (13 Geo. III, c. 63) the Supreme Court of Judicature at Fort William was declared to have full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint clerks and other ministerial officers, and to form and establish such rules of practice, and such rules for the process of the court, and to do all such things as might be found necessary for the administration of justice and the due execution of all or any of the powers which by the charter might be granted and committed to the court. It was also to be at all times a court of record and a court of oyer and terminer and jail delivery in and for the town of Calcutta and factory of Fort William, and the limits thereof, and the factories subordinate thereto.

Under s. 14 of the same Act, the new charter of the court, and the jurisdiction, powers, and authorities to be thereby established, were to extend to all British subjects who should reside in the kingdoms or provinces of Bengal, Bihar, and Orissa, or any of them, under the protection of the Company, and the court was to have full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crime, misdemeanours, or oppressions, and to entertain, hear, and determine any suits or actions whatsoever against any of His Majesty's subjects in Bengal, Bihar, and Orissa, and any suit,

action, or complaint against any person who at the time when the debt or cause of action or complaint had arisen had been employed by, or been directly or indirectly in the service of, the Company, or of any of His Majesty's subjects.

Section 156 of the East India Company Act, 1793 (33 Geo. III, c. 52), enacted and declared that the power and authority of the supreme court at Calcutta extended to the high seas, and that the court should have full power and authority to inquire, hear, try, examine, and determine, by the oaths of honest and lawful men, being British subjects resident in the town of Calcutta, all treasons, murders, piracies, robberies, felonies, maimings, forestallings, extortions, trespasses, misdemeanours, offences, excesses, and enormities, and maritime causes whatsoever, according to the laws and customs of the Admiralty of England, done, perpetrated, or committed upon any of the high seas, and to fine, imprison, correct, punish, chastise, and reform parties guilty and violators of the laws, in like and in as ample manner to all intents and purposes as the said court might or could do if the same were done, perpetrated, or committed within the limits proscribed by the charter, and not otherwise or in any other manner.

The East India Act, 1797 (37 Geo. III, c. 142), after providing for the erection of courts of judicature at Madras and Bombay, gave those courts, by s. 11, the jurisdiction formerly exercisable by the mayor's court at Madras and at Bombay, or by the courts of oyer and terminer or jail delivery there, and declared, by s. 13, that these courts were to have full power to hear and determine all suits and actions that might be brought against the inhabitants of Madras and Bombay respectively in manner provided by the charter, subject, however, to the proviso in s. 108 of this Digest.

The Government of India Act, 1800 (39 & 40 Geo. III, c. 78), authorized the grant of a charter for the establishment of a supreme court at Madras. It was (s. 2) to have full power to exercise such civil, criminal, admiralty, and ecclesiastical jurisdiction, both as to natives and British subjects, and to be invested with such powers and authorities, privileges and immunities, for the better administration of the same, and to be subject to the same limitations, restrictions, and control within Fort St. George and the town of Madras, and the limits thereof, and the factories subordinate thereto, and within the territories subject to or dependent on the Government of Madras, as the supreme court at Fort William was invested with or subject to within Fort William or the kingdoms or provinces of Bengal, Bihar, and Orissa.

The Indian Bishops and Courts Act, 1823 (4 Geo. IV, c. 71, s. 7), authorized the grant of a charter for the establishment of a supreme court at Bombay with jurisdiction corresponding to that previously given to the supreme court at Madras, and declared, by s. 17, that the supreme courts at Madras and Bombay were to have the same powers as the supreme court at Fort William in Bengal.

In 1828 an Act (9 Geo. IV, c. 74) was passed for improving the administration of criminal justice in the East Indies. The only

sections now unrepealed in this Act are ss. 1, 7, 8, 9, 25, 26, 56, and 110. By s. 1 the Act is declared to extend to all persons and all places, as well on land as on the high seas, over whom or which the criminal jurisdiction of any of His Majesty's courts of justice erected or to be erected within the British territories under the government of the United Company of Merchants of England trading to the East Indies does or shall hereafter extend. Sections 7, 8, and 9, which relate to accessories, and s. 25, which relates to punishments, are apparently superseded as to admiralty cases by the Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), and the Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 88) (see *The Queen Empress v. Barton*, 1 L. R. 16 Cal. 238), and as to other cases by the Indian Codes.

Section 26 lays down a rule for interpreting criminal statutes, corresponding to the rule embodied for India in the General Clauses Act of 1897, and for the United Kingdom in the Interpretation Act, 1889.

Section 56 extends to British India the provisions previously enacted for England by 9 Geo. IV, c. 31, s. 8, with respect to offences committed in two different places, or partially committed in one place and completed in another, but has been held not to make any person liable to punishment for a complete offence who would not have been so liable before. See *Nga Hoong v. Reg.*, 7 Moo. Ind. App. 72, 7 Cox C.C. 489. In this case some Burmese native subjects of the East India Company committed a murder on the Cocos Islands, which were then uninhabited islands in the Bay of Bengal, within the limits of the Company's charter. They were convicted under the Act of 1828 by the supreme court of Calcutta, but the conviction was reversed by the Privy Council. It was held that the place in which the offence was committed was, but the offenders personally were not, within the jurisdiction conferred by the statute, and that the object of the statute was only to apply to the East Indies the enactment previously passed for England.

Section 110 of the Act of 1828 has been repealed, except so far as it is in force in the Straits Settlements.

The Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96), enacts that if any person within any colony (which is to include British India, 23 & 24 Vict. c. 88, s. 1) is charged with the commission of any offence committed upon the sea or in any haven, river, creek, or place where the admiral has jurisdiction, or being so charged is brought for trial to any colony, all magistrates, justices of the peace, public prosecutors, juries, judges, courts, public officers, and other persons in the colony are to have the same jurisdiction and authority with respect to the offence as if the offence had been committed upon any waters situate within the limits of the local jurisdiction of the courts of criminal justice of the colony.

The Act further enacts (s. 3) that where any person dies in any colony of any stroke, poisoning, or hurt, having been feloniously stricken, poisoned, or hurt upon the sea, or in any haven, river, creek, or place where the admiral has jurisdiction, or at any place out of the colony, every offence committed in respect of any such case, whether amounting

to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with and punished in the colony as if the offence had been wholly committed in the colony; and if any person is charged in any colony with any such offence resulting in death on the sea, or in any such haven, &c., the offence is to be held for the purposes of the Act to have been wholly committed upon the sea.

The Admiralty Jurisdiction (India) Act, 1860 (23 & 24 Vict. c. 88), provides (s. 2) that where any person within any place in India is charged with the commission of any offence in respect of which jurisdiction is given by the Act of 1849, or, being so charged, is brought for trial under that Act to any place in India, if before his trial he makes it appear that if the offence charged had been committed in that place he could have been tried only in the supreme court of one of the three presidencies in India, and claims to be so tried, the fact is to be certified, and he is to be sent for trial and tried accordingly.

The Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), abolished the supreme courts at Calcutta, Madras, and Bombay, and the Company's courts of appeal at those places, and provided for the establishment by charter of high courts at those places.

Under s. 9, 'each of the high courts to be established under this Act shall have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the presidency for which it is established, as Her Majesty may by such letters patent as aforesaid grant and direct; subject, however, to such directions and limitations as to the exercise of original, civil, and criminal jurisdiction beyond the limits of the presidency towns as may be prescribed thereby, and save as by such letters patent may be otherwise directed; and, subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the high court to be established in each presidency shall have and exercise all jurisdiction, and every power and authority whatsoever in any manner vested in any of the courts in the same presidency abolished under this Act at the time of the abolition of such last-mentioned courts.'

Section 11 declares that the existing provisions applicable to the supreme courts are to apply to the high courts.

The Courts (Colonial) Jurisdiction Act, 1874 (37 & 38 Vict. c. 27), enacts, by s. 3, that when, by virtue of any Act of Parliament, a person is tried in a court of any colony (which by s. 2 is to include British India) for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of the colony and of the local jurisdiction of the court, or, if committed within that local jurisdiction, made punishable by that Act, he shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of the colony and of

the local jurisdiction of the court, and to no other. Provided that if the crime or offence is not punishable by the law of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment (other than capital punishment) as seems to the court most nearly to correspond to the punishment to which he would have been liable if the crime or offence had been tried in England.

The Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), which was passed in consequence of the decision in the *Franconia* case (*R. v. Keyn*, 2 Ex. 169), and which extends to India, declares that an offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed the offence may be arrested, tried, and punished accordingly. Proceedings for the trial and punishment of a person who is not a subject of Her Majesty, and is charged with any such offence as is declared by the Act to be within the jurisdiction of the admiral, are not to be instituted in British India except with the leave of the governor-general or the governor of the presidency. For the purpose of any offence declared by the Act to be within the jurisdiction of the admiral, any part of the sea within one marine league of the coast, measured from low-water mark, is to be deemed to be open sea within the territorial waters of Her Majesty's dominions.

Under the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), the Legislature of British India may declare certain courts to be colonial courts of admiralty, and courts so declared have the admiralty jurisdiction described in the Act. Under this power the Legislature of India has, by Act XVI of 1891, s. 2, declared the high courts at Calcutta, Madras, and Bombay, as well as the courts of the recorder at Rangoon, the Resident at Aden, and the district court of Karachi, to be colonial courts of admiralty.

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), provides, by s. 686, that 'where any person, being a British subject, is charged with having committed any offence on board any British ship on the high seas or in any foreign port or harbour, or on board any foreign ship to which he does not belong, or, not being a British subject, is charged with having committed any offence on board any British ship on the high seas, and that person is found within the jurisdiction of any court in Her Majesty's dominions which would have had cognizance of the offence if it had been committed on board a British ship within the limits of its ordinary jurisdiction, that court shall have jurisdiction to try the offence as if it had been so committed; but nothing in this section is to affect the Admiralty Offences (Colonial) Act, 1849.'

Section 687 of the same Act provides that 'all offences against property or person committed in or at any place, either ashore or afloat, out of Her Majesty's dominions by any master, seaman, or apprentice who, at the time when the offence is committed, is, or within three months previously has been, employed in any British

ship, shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if those offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.'

It seems to follow from these several enactments, and from paras. 29 and 32 of the Charters, that where a chartered high court exercises jurisdiction in respect of—

- (1) an offence committed on land, both the procedure and the substantive law to be applied are those of British India, i.e. both the Code of Criminal Procedure and the Penal Code apply;
- (2) an offence committed at sea by a native of British India, the position is the same; or
- (3) an offence committed at sea by any other person, whether within territorial waters or beyond them,

the procedure is regulated by British Indian law, but the nature of the crime and the punishment are determined by English law.

See *Queen Empress v. Barton*, I. L. R. 16 Cal. 238, and Mayne, *Criminal Law of India*, chap. ii.

(c) The enactment reproduced by this sub-section was probably suggested by the Patna case, as to which see Stephen's *Nuncomar and Impey*, chap. xii. In 1873 certain licensed liquor-vendors moved the high court at Calcutta for a mandamus to compel the Board of Revenue to issue rules prescribing the fees payable for liquor licences, but it was held that the matter related wholly to the revenue, and that therefore by 21 Geo. III, c. 70, s. 8, the high court had no jurisdiction (*Re Audur Chundra Shaw*, 11 Beng. L. R. 250). In a later Madras case (1876) doubts were expressed as to the extent to which the enactment was still in force, and, in particular, whether it had not been repealed except as to land revenue. See *Collector of Sea Customs v. Panniar Chithambaram*, I. L. R. 1 Mad. 89. In any case it applies only to the jurisdiction derived from the supreme court, i.e. to the original jurisdiction.

102. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things; that is to say—

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules for regulating the practice and proceedings of such courts;

Powers of high court with respect to subordinate courts.
[24 & 25 Vict. c. 104, s. 15.]

(d) prescribe forms for any proceedings in such courts, and for the mode of keeping any books, entries, or accounts by the officers of any such courts; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of such courts.

Provided that all such rules, forms, and tables require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases, of the local Government (a).

(a) As to the relations of the high courts to the subordinate courts, see further above, pp. 153, 163.

Exercise of jurisdiction by single judges or division courts. [24 & 25 Vict. c. 104, ss. 13, 14.]

103.—(1) Subject to any law made by the Governor-General in Council, each high court may by its own rules provide as it thinks fit for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court determines what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

Power for Governor-General in Council to alter local limits of jurisdiction of high courts. [28 & 29 Vict. c. 15, ss. 3, 4, 6.]

104.—(1) (a) The Governor-General in Council may by order transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorize any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established (b), and also to exercise any such jurisdiction in respect of Christian (c) subjects of His Majesty resident in any part of India outside British India (d).

(2) The Governor-General in Council must transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such

disallowance makes void and annuls the order as from the day on which the governor-general makes known by proclamation or by signification to his council that he has received notification of the disallowance, but no act done by any high court before such notification is invalid by reason only of such disallowance.

(4) Nothing in this section affects any power of the Governor-General in Council in legislative meetings

(a) As to the object and construction of this section, see Minutes by Sir H. S. Maine, No 45.

(b) For orders made under this provision, see Notifications, Nos 178, 180, 181, of September 23, 1874; Mayne, *Criminal Law of India*, p 258. It would seem that s. 3 of the Act of 1865 (reproduced by this provision) only empowered the governor-general to make an order transferring any territory from the jurisdiction of one court to the jurisdiction of another, and that the second branch of the section was only to enable the governor-general to authorize the court to which such transfer was made to exercise jurisdiction. If this is so, the Governor General in Council could not either by order or legislation extend the local and personal jurisdiction of the high court at Allahabad over the province of Oudh, or authorize two of the judges of the high court to sit at Lucknow to try cases arising in Oudh, or empower the Judicial Commissioner of Oudh to transmit cases from Oudh for trial at Allahabad by judges of the high court there. By s. 2 of the Indian High Courts Act, 1911 (1 & 2 Geo V, c 15) power is now given in certain cases to alter by letters patent the local jurisdiction of a high court.

(c) 'The comprehensive term "Christian" was doubtless used because it might be convenient to give a particular high court matrimonial and testamentary jurisdiction over all Christian subjects' Minutes by Sir H. S. Maine, Nos 44, 45.

(d) i.e. in Native States. See s 121

105.—(1) Subject to any law made by the Governor-General in Council (a), the governor-general and each of the governors of Bengal, Madras, and Bombay, and each of the members of their respective councils, is not—

- (a) subject to the original jurisdiction of any high court by reason of anything counselled, ordered, or done by any of them, in his public capacity only, nor
- (b) liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction; nor

Exemption from jurisdiction of high court in public capacity. [13 Geo III, c 63, ss 15, 17, 21 Geo. III, c 70 s 1 37 Geo III, c 142, s 11

39 & 40
Geo. III,
c. 79, s. 3.
4 Geo. IV,
c. 71, s. 7.]

(c) subject to the original criminal jurisdiction of any high court in respect of any misdemeanour at common law, or under any Act of Parliament, or in respect of any act which if done in England would have been a misdemeanour.

(2) The exemption under this section from liability to arrest and imprisonment extends also to the chief justices and other judges of the several high courts.

(a) The enactments reproduced by this section apply only to the original jurisdiction of the high courts, and are not excepted from the legislative power of the governor-general's council by 24 & 25 Vict. c. 67, s. 22. The exemptions from jurisdiction granted by 21 Geo. III, c. 70, and reproduced in this section, were granted in consequence of the proceedings in the *Cossijurah* case. See above, p. 54; *Mayne, Criminal Law of India*, 3rd edition, p. 326; and *Jehangir v. Secretary of State for India*, I. L. R. 27 Bom. 189.

Written order by governor-general a justification for any act in any court in India.
[21 Geo. III, c. 70, ss 2, 3, 4.]

106. Subject to any law made by the Governor-General in Council, the order in writing of the Governor-General in Council for any act is in any proceeding, civil or criminal, in any high court acting in the exercise of its original jurisdiction, a full justification of the act, except so far as the act extends to any [European] British subject of His Majesty (a), but nothing in this section exempts the governor-general, or any member of his council, or any person acting under their orders, from any proceedings in respect of any such act before any competent court in England.

(a) The expression in the Act of 1780 is 'British subjects,' which of course must be construed in the narrower sense. As to the circumstances out of which this enactment arose, see above, pp. 54 foll., and *Mill's British India*, v. 373-375; *Cowell's Tagore Lectures*, p. 72; *Nuncomar and Impey*, ii. 189. As to the limitations formerly imposed on the powers of the Indian Governments in dealing with European British subjects, see *In re Ameer Khan*, 6 B. L. R. 446, and the notes on ss. 63 and 79 of this Digest. The enactments reproduced by this section do not apply to the Governments of Madras and Bombay. They are applied to the existing high courts by the conjoint operation of 39 & 40 Geo. III, c. 79, s. 3; 4 Geo. IV, c. 71, s. 7; and 24 & 25 Vict. c. 104, s. 11, but appear to affect only the original jurisdiction of the high courts.

Procedure in case of oppression.

107.—(1) (a) Subject to any law made by the Governor-General in Council, if any person makes a complaint in

writing, and on oath, to the high court at Calcutta of any oppression or injury alleged to have been caused by any order of the governor-general, or any member of his council, and gives security to the satisfaction of the high court to prosecute his complaint by indictment, information, or action before a competent court in Great Britain within two years from the making of the same or from the return into Great Britain of the person complained against, he is entitled to have a true copy of any order of which he complains produced before the high court, and authenticated by the court, and he and the persons against whom he complains may examine witnesses on the matter of the complaint.

sion, &c., by governor-general or his council. [21 Geo. III, c. 70, ss. 5, 6.]

(2) The high court must, if necessary, compel the attendance and examination of witnesses in any such case in the same manner as in other criminal or civil proceedings.

(3) Sections forty to forty-five of the East India Company Act, 1772, apply in the case of proceedings under this section as in the case of the proceedings referred to in those sections.

13 Geo. III, c. 63.

(a) The provision reproduced by this section has remained a dead letter from the date of its enactment, appears to be unnecessary, and could be repealed by Indian legislation. It does not apply to the Madras High Court, *Re Wallace*, I. L. R. 8 Mad. 24.

The sections referred to in sub-section (3) give jurisdiction to the Court of King's Bench, now the High Court, and provide for the taking of evidence in India, and its admissibility in England.

Law to be administered.

108. Subject to any law made by the Governor-General in Council, the high courts, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras, or Bombay, as the case may be, shall, in matters of inheritance and succession to lands, rents, and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or customs having the force of law, decide according to the law or custom to which the defendant is subject.

Law to be administered in cases of inheritance and succession. [21 Geo. III, c. 70, s. 17. 37 Geo. III, c. 142, s. 13.]

This section reproduces the enactments marginally noted so far as they appear to represent existing law. The qualifying words at the beginning of the clause represent existing law, the enactments marginally noted being, under 24 & 25 Vict. c. 67, s. 22, capable of being altered by Indian legislation.

In Warren Hastings's celebrated plan for the administration of justice, proposed and adopted in 1772, when the East India Company first took upon themselves the entire management of their territories in India, the twenty-third rule specially reserved their own laws to the natives, and provided that 'Moulavies or Brahmins' should respectively attend the courts to expound the law and assist in passing the decree.

Subsequently, when the governor-general and council were invested by Parliament with the power of making regulations, the provisions and exact words of Warren Hastings's twenty third rule were introduced into the first regulation enacted by the Bengal Government for the administration of justice. This regulation was passed on April 17, 1780.

By section 27 of this regulation it was enacted 'that in all suits regarding inheritance, marriage, and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to. This section was re-enacted in the following year, in the revised Code, with the addition of the word 'succession.' Section 27 of the Act of 1781 constitutes the first express recognition of Warren Hastings's rule in the English Statute Law. Enactments to the same effect have since been introduced into numerous subsequent English statutes and Indian Acts,—see, for example, 37 Geo. III, c. 142, s. 13; Bombay Regulation IV of 1827, s. 26; Act IV of 1872, s. 5 (Punjab) as amended by Act XII of 1878; Act III of 1873, s. 16 (Madras); Act XX of 1875, s. 5 (Central Provinces); Act XVIII of 1876, s. 3 (Oudh); Act XII of 1887, s. 37 (Bengal, North-Western Provinces, and Assam); Act XI of 1880, s. 4 (Lower Burma). See also clauses 19 and 20 of the Charter of 1865 of the Bengal High Court, the corresponding clauses of the Madras and Bombay Charters, and clauses 13 and 14 of the Charter of the North-Western Provinces High Court.

The effect of 21 Geo. III, c. 70, s. 17, is explained in *Sarkies v. Prosonno Mayi Dasi*, 1. L. R. 6 Cal. 794 (application for dower by the widow of an Armenian), and *Jagat Mohini Dasi v. Dwarkanath Beisakh*, 1. L. R. 8 Cal. 582 (where it was held that there was no question of succession or inheritance).

The Indian Contract Act (IV of 1872) contains a saving (s. 2) for any statute, Act, or regulation not thereby expressly repealed. This saving has been held to include the enactment reproduced by this section, under which matters of contract are, within the presidency towns, but not elsewhere, directed to be regulated by the personal law of the party, and thus, paradoxically enough, certain rules of Hindu law have maintained their footing in the last part of British India where they might have been expected to survive. See *Nobin Chunder*

Bannerjee v. Romesh Chunder Ghose, I. L. R. 14 Cal. 781, where it was held that the custom of *damdupat* (*Law Quarterly Review* for 1896, p. 45) was still in force in Calcutta. If, however, any native law or custom is clearly inconsistent with the terms of the Contract Act, it would be held to be repealed. See *Madhub Chunder Porumanick v. Rajcoomar Doss*, 14 Beng. Law Rep. 76.

The leading case on the extent to which English law has been introduced into India is the *Mayor of Lyons v. East India Company* (1836), reported 1 Moo. P. C. 176, and also, with useful explanatory and illustrative matter, 3 State Trials, N. S. 647. The Judicial Committee in this case laid down the principle that the general introduction of English law into a conquered or ceded country does not draw with it such parts as are manifestly inapplicable to the circumstances of the settlement, and decided in particular that the English law incapacitating aliens from holding real property to their own use and transmitting it by devise or descent had never been expressly introduced into Bengal, and that the Statute of Mortmain, 9 Geo. II, c. 36, did not apply to India. See also the famous judgement of Lord Stowell in *The Indian Chief*, (1800) 3 Rob. Adm. 12 at pp. 28, 29 (quoted below, p. 384); *Freeman v. Fairlie*, (1828) 1 Moo. Ind. App. 304, 2 State Trials, N. S. 1000; *Advocate-General of Bengal v. Ranees Surnomoye Dossee*, (1863) 2 Moo. P. C., N. S. 22 (law as to forfeiture for suicide); and *Ram Coomarr Coondoo v. Chunder Canto Mookerjee*, (1876) L. R. 2 App. Cas. 186 (law as to maintenance and champerty). And as to the effect of successive charters in introducing English law into India, see above, p. 34; Morley's *Digest*, Introduction, pp. xi, xxiii; and Mr. Whitley Stokes's preface to the first edition of the older statutes relating to India (reprinted in the edition of 1881).

Advocate-General.

109.—(1) His Majesty may, by warrant under his Royal Sign Manual, appoint an advocate-general for each of the presidencies of Bengal, Madras, and Bombay (a).

(2) The advocate-general for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England (b).

(a) The advocate-general for Bengal is a law officer of the Government of India.

(b) See *Secretary of State for India v. Bombay Landing and Shipping Company*, 5 Bom. H. C. R. O. C. J., 42, and Act V of 1898, ss. 194 (2), 333.

Appoint-
ment and
powers of
advocate-
general.
[53 Geo.
III, c. 155,
s. 111.
21 & 22
Vict. c.
106, s. 29.]

PART X

ECCLESIASTICAL ESTABLISHMENT.

Jurisdiction
of Indian
bishops.
[53 Geo.
III, c. 155,
ss. 51, 52,
3 & 4 Will.
IV, c. 85,
ss. 92, 93,
94.]

110.—(1) The bishops of Calcutta, Madras, and Bombay (a) have and may exercise such ecclesiastical jurisdiction and episcopal functions as His Majesty may, by letters patent, direct for the superintendence and good government of the ministers of the Church of England within their respective dioceses.

(2) The Bishop of Calcutta is the metropolitan bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

(3) Each of the bishops of Madras and Bombay is subject to the Bishop of Calcutta as such metropolitan, and must at the time of his appointment to his bishopric or at the time of his consecration as bishop take an oath of obedience to the Bishop of Calcutta in such manner as His Majesty by letters patent may be pleased to direct (b).

(4) His Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras, and Bombay.

[37 & 38
Vict. c. 77,
s. 13.]

(5) Nothing in this Digest or in any such letters patent as aforesaid prevents any person who is or has been bishop of any diocese in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the bishop thereof.

(a) The bishops of Calcutta, Madras, and Bombay are the only Indian bishops who are referred to in the Acts relating to India. Bishops have also been appointed, under letters patent or otherwise, for Chota Nagpore, Lahore, Lucknow, Nagpur, Rangoon, Tinnevely, and Travancore, and an assistant bishop has been appointed in Madras.

(b) As to these oaths, see 28 & 29 Vict. c. 122, and 31 & 32 Vict. c. 72, s. 14. Under 37 & 38 Vict. c. 77, s. 12, the archbishops of Canterbury or York may, in consecrating any person to the office of bishop for the purpose of exercising episcopal functions elsewhere than in England, dispense with the oath of due obedience to the archbishop.

Power to
admit to
holy
orders.

111.—(1) The Bishop of Calcutta may admit into the holy orders of deacon or priest any person whom he, on examination, deems duly qualified specially for the purpose of taking

on himself the cure of souls, or officiating in any spiritual capacity within the limits of the diocese of Calcutta, and residing therein. [4 Geo. IV, c. 71, s. 6.]

(2) The deposit with the bishop of a declaration of such a purpose, and a written engagement to perform the same, signed by the person seeking ordination, is a sufficient title with a view to his ordination.

(3) It must be distinctly stated in the letters of ordination of every person so admitted to holy orders that he has been ordained for the cure of souls within the limits of the diocese of Calcutta only.

(4) Unless a person so admitted is a British subject, he is not required to take the oaths and make the subscriptions which persons ordained in England are required to take and make (a).

(a) The enactment reproduced by this section appears to apply only to the Bishop of Calcutta, and is probably unnecessary, as being covered by the general language of the letters patent enabling the Bishop of Calcutta to perform all the functions peculiar and appropriate to the office of bishop within the diocese of Calcutta.

112. If any person under the degree of bishop is appointed to the bishopric of Calcutta, Madras, or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining bishops, authorizing and charging them to perform all requisite ceremonies for the consecration of the person so to be appointed. Consecration of person resident in India appointed to bishopric. [3 & 4 Will IV, c. 85, s. 50.]

113.—(1) There may be paid to the bishops and archdeacons of Calcutta, Madras, and Bombay, out of the revenues of India, such salaries (a) and allowances (b) as may be fixed by the Secretary of State in Council, but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India. Salaries and allowances of bishops and archdeacons. [53 Geo. III, c. 155, ss. 49, 50. 4 Geo. IV,

c. 71, ss. 3, 4, 5-3 & 4 Will. IV, c. 85, ss. 90, 96, 97, 98, 100, 101. (2) There are to be paid out of the revenues of India the expenses of visitations of the said bishops, and of the providing a suitable house for the residence of the Bishop of Calcutta (c), but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

5 & 6 Vict. c. 119, ss. 3, 4. (a) As to the existing salaries, see note on s. 80.

43 Vict. c. 3, ss. 2, 3. (b) Pensions, as distinguished from allowances, appear to be still paid under 4 Geo. IV, c. 71, s. 3, 6 Geo. IV, c. 85, s. 15, and 3 & 4 Will. IV, c. 85, s. 96, and not under 43 Vict. c. 3, s. 3. But it seems hardly worth while to reproduce here the specific provisions about bishops' pensions or about payments to representatives of deceased bishops.

(c) The statutory obligation to provide a house for the Bishop of Calcutta is exhausted, but it may have been construed as including an obligation to maintain his house.

Furlough rules. [34 & 35 Vict. c. 62.] 114. His Majesty may make such rules as to the leave of absence of the bishops of Calcutta, Madras, or Bombay, on furlough or medical certificate as seem to His Majesty expedient.

Establishment of chaplains of Church of Scotland. [3 & 4 Will. IV, c. 85, s. 102.] 115.—(1) Two members of the establishment of chaplains maintained in each of the presidencies of Bengal, Madras, and Bombay must always be ministers of the Church of Scotland, and are entitled to have from the revenues of India such salary as is from time to time allotted to the military chaplains in the several presidencies.

(2) The ministers so appointed chaplains must be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and are subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgements are subject to dissent, protest, and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

Saving as to grants to Christians. [3 & 4 Will. IV, c. 85, s. 102.] 116. Nothing in this Digest prevents the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion, or community of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

PART XI.

OFFENCES, PENALTIES, AND PROCEDURE.

- 117.** If any person holding office under the Crown in India does any of the following things ; that is to say,—
- (1) If he oppresses any of His Majesty's subjects (a) within his jurisdiction or in the exercise of his authority ;
 - (2) If (except in case of necessity, the burden of proving which shall be on him) he wilfully disobeys or wilfully omits, forbears, or neglects to execute any orders or instructions of the Secretary of State ;
 - (3) If he is guilty of any wilful breach of the trust and duty of his office and employment ;
 - (4) If, being the governor-general, or a governor, or a member of the council of the governor-general or of a governor, or being a person employed or concerned in the collection of revenue or the administration of justice in the presidency of Bengal or the province of Bihar and Orissa, he is concerned in or has any dealings or transactions by way of traffic or trade within any of the provinces of India or other parts [otherwise than as a shareholder in any joint-stock company or trading corporation] ;
 - (5) If he accepts or receives for his own use, in the discharge of his office, any gift, gratuity, or reward, pecuniary or otherwise [except in accordance with rules made by the Secretary of State as to the receipt of presents], and except in the case of fees paid to barristers, physicians, surgeons, and chaplains in the way of their respective professions ;
- he is guilty of a misdemeanour.

Certain acts to be misdemeanours: Oppression. [10 Geo. III, c. 47, s. 4.] Wilful disobedience. [33 Geo. III, c. 52, s. 65, 3 & 4 Will IV, c. 85, s. 80.] Breach of duty. [33 Geo. III, c. 52, s. 65, 3 & 4 Will IV, c. 85, s. 80.] Trading. [33 Geo. III, c. 52, s. 157, 3 & 4 Will IV, c. 85, s. 76.] Receiving presents. [13 Geo. III, c. 63, ss. 23, 24, 25, 33 Geo. III, c. 52, ss. 62, 64, 3 & 4 Will IV, c. 85, s. 76.]

If a person is convicted of having accepted or received any such gift, gratuity, or reward, the court may order that the gift, gratuity, or reward, or any part thereof, be restored to

the person who gave it, and that the whole or any part of any fine imposed on the offender be paid or given to the prosecutor or informer, as the court may direct (b).

(a) The expression 'His Majesty's subjects' in the Act of 1770 (10 Geo. III, c. 47, s. 4) was used at a time when it was very doubtful how far the sovereignty of the British Crown extended over natives of India, at all events outside the presidency towns, and was possibly intended to be used in the narrower sense formerly attributed to the expression 'British subjects.' See note (c) on s. 63 above.

(b) This section reproduces with as much exactness as seems practicable the several enactments noted in the margin. In many cases enactments dealing with the same offence use different language, and apply to different classes of persons. The provisions reproduced from 3 & 4 Will. IV, c. 85, cannot be altered by Indian legislation. See 24 & 25 Vict. c. 67, s. 22.

The words 'otherwise than as a shareholder in any joint-stock company or trading corporation,' and 'except in accordance with rules made by the Secretary of State as to the receipt of presents,' do not occur in the enactments reproduced, but represent the limitations placed in practice on the extremely general language of the enactments.

Similar prohibitions of trading or lending money are contained in enactments of the Indian legislatures. See, e.g., Act XV of 1848 (trading by officers of chartered courts); Act II of 1874, s. 10 (by administrator-general); Acts VII of 1878, s. 74, and XIX of 1881, s. 73 (by forest officers); Acts V of 1861, s. 10, XXIV of 1859, s. 19; Bombay Act VII of 1867, s. 11 (by police officers); Acts XI of 1875, s. 34, and V of 1879, s. 3 (by officers of presidency banks); Act XVIII of 1881, s. 155; Bombay Act V of 1879, s. 31; Madras Regulation I of 1803, s. 40; Madras Regulation II of 1803, s. 64; Bengal Regulation II of 1793, s. 18 (by revenue officers); Bengal Regulation XXXVIII of 1793, s. 2 (loans by civil servants).

As to the rules prohibiting the receipt of presents by governors of and servants of the Crown in British Colonies, see Todd, *Parliamentary Government in the British Colonies*, p. 153 (second edition).

Loans to
native
princes.
[37 Geo.
III, c. 142,
s. 28.]

118.—(I) If any British subject, without the previous consent in writing of the Secretary of State in Council or of the Governor-General in Council or of a local Government, by himself or another—

- (a) lends any money or other valuable thing to any native prince or chief in India; or
- (b) is concerned in lending money to, or raising or procuring money for, any such native prince or chief, or becomes security for the repayment of any such money; or

(e) lends any money or other valuable thing to any other person for the purpose of being lent to any such native prince or chief ; or

(d) takes, holds, or is concerned in any bond, note, or other security granted by any such native prince or chief for the repayment of any loan or money hereinbefore referred to, he is guilty of a misdemeanour.

(2) Every bond, note, or security for money, of what kind or nature soever, taken, held, or enjoyed, either directly or indirectly, for the use and benefit of any British subject, contrary to the intent of this section, is void (a).

(a) The enactment reproduced by this section was passed in 1797 to stop the scandals caused by the lending of money by European adventurers to native princes on exorbitant terms. See above, p. 71. The expression ' British subject,' as used in the Act of 1797, would doubtless be construed in its narrower sense, as not including natives of India.

119.—(1) If any person holding office under the Crown in India commits any offence referred to in this Digest, or any other crime or offence, the offence may, without prejudice to any other jurisdiction, be inquired of, heard, tried, and determined before His Majesty's High Court of Justice, and be dealt with as if committed in the county of Middlesex.

Prosecution of offences in England. [10 Geo. III, c. 47, s. 4. 13 Geo. III, c. 63, s. 39. 21 Geo. III, c. 70, s. 7]

(2) Every British subject is amenable to all courts of justice in Great Britain of competent jurisdiction to try offences committed in India for any offence committed within India and outside British India as if the offence had been committed within British India.

(3) Every prosecution before a high court in British India in respect of any offence referred to in this section must be commenced within five years after the commission of the offence (a).

(a) This section is merely an imperfect attempt to reproduce several enactments of the eighteenth century which are still unrepealed, and which, though obsolete as respects procedure, may still be of importance with respect to jurisdiction. Section 67 of 33 Geo. III, c. 52, has been repealed as to Indian courts by Act XI of 1872, but is still unrepealed as to courts in the United Kingdom.

The limitation under 21 Geo. III, c. 70, s. 7 (which applies only to proceedings against the governor-general or a member of his council), is

five years after commission of offence or arrest in England. The limitation under 33 Geo. III, c. 52, s. 141, is six years after commission of offence. There is a three years' limitation under 33 Geo. III, c. 52, s. 162, which is repealed as to British India by Act IX of 1871. But all these limitations, so far as they relate to proceedings in England, appear to be virtually repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61). The six years' limitation appears to survive as to proceedings in India.

The enactments reproduced run as follows :—

'If any person whatsoever employed by or in the service of the said united Company, in any civil or military station, office, or capacity whatsoever in the East Indies, or deriving or claiming any power, authority, or jurisdiction by or from the said united Company, shall, after the passing of this Act, be guilty of oppressing any of His Majesty's subjects beyond the seas within their respective jurisdictions, or in the exercise of any such station, office, employment, power, or authority derived or claimed by, from, or under the said united Company, or shall be guilty of any other crime or offence, such oppressions, crimes, and offences shall and may be inquired of, heard, and determined in His Majesty's Court of King's Bench in England; and such punishments shall be inflicted on such offenders as are usually inflicted for offences of the like nature committed in that part of Great Britain called England; and . . . the same and all other offences committed against this Act may be alleged to be committed, and may be laid, inquired of, and tried in the county of Middlesex' (10 Geo. III, c. 47, s. 4).

. . . 'If any governor-general, president, or governor or council of any of the said Company's principal or other settlements in India, or the chief justice, or any of the judges of the said Supreme Court of Judicature to be by the said new charter established, or of any other court in any of the said united Company's settlements, or any other person or persons who now are, or heretofore have been, employed by or in the service of the said united Company in any civil or military station, office, or capacity, or who have or claim, or heretofore have had or claimed, any power or authority or jurisdiction by or from the said united Company, or any of His Majesty's subjects residing in India, shall commit any offence against this Act, or shall have been or shall be guilty of any crime, misdemeanour, or offence committed against any of His Majesty's subjects, or any of the inhabitants of India, within their respective jurisdictions, all such crimes, offences, and misdemeanours may be respectively inquired of, heard, tried, and determined in His Majesty's Court of King's Bench, and all such persons so offending and not having been before tried for the same offence in India, shall on conviction, in any such case as is not otherwise specially provided for by this Act, be liable to such fine or corporal punishment as the said court shall think fit; and, moreover, shall be liable at the discretion of the said court, to be adjudged to be incapable of serving the said united Company in any office, civil or military; and all and every such crimes, offences, and misdemeanours as aforesaid may be alleged

to be committed, and may be laid, inquired of, and tried in the county of Middlesex' (13 Geo. III, c. 63, s. 39).

'No prosecution or suit shall be carried on against the said governor-general, or any member of the council, before any court in Great Britain (the High Court of Parliament only excepted), unless the same shall be commenced within five years after the offence committed, or within five years after his arrival in England' (21 Geo. III, c. 70, s. 7).

'All His Majesty's subjects, as well servants of the said united Company as others, shall be and are hereby declared to be amenable to all courts of justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanours, offences, and crimes whatever, by them or any of them done or to be done or committed in any of the lands or territories of any native prince or State, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government in India' (33 Geo. III, c. 52, s. 67).

'All penalties, forfeitures, seizures, causes of seizure, crimes, misdemeanours, and other offences, which shall arise or be incurred or made under or shall be committed against this Act, shall be sued for, prosecuted, examined, recovered, and adjudged in any of His Majesty's Courts of Record at Westminster, or in the Supreme Court of Judicature at Fort William in Bengal, or in one of the mayors' courts at Madras or Bombay respectively, in manner following; that is to say, all such pecuniary penalties, and all forfeitures of ships, vessels, merchandise and goods, shall and may be sued for, condemned, and recovered by action, bill, suit, or information, wherein no essoin, protection, wager of law, or more than one imparlance, shall be granted or allowed; and all such seizures, whether of any person or of any ships, vessels, merchandise and goods, and all causes of such seizures, shall be cognizable in such actions, suits, or prosecutions as shall bring into question or relate to the lawfulness or regularity of any such seizure; and all such offences as by this Act are not made punishable by pecuniary penalties or by any forfeiture of goods, but by fine or imprisonment, or both, or are hereby created, without providing any particular punishment, shall be prosecuted by indictment or information as misdemeanours, for breach thereof, and shall be punished by fine or imprisonment, or both, at the discretion of the court in which such prosecution shall, by virtue of this Act, be begun and carried on; and if such prosecution for a misdemeanour shall be in any of the said courts in the East Indies, and the person or persons prosecuted shall be there convicted, it shall be lawful for such court to order, as part or for the whole of the punishment, any such person or persons to be sent and conveyed to Great Britain' (33 Geo. III, c. 52, s. 140).

'Whenever any action, bill, suit, information, or indictment shall be brought or prosecuted in any of His Majesty's Courts of Record at Westminster, for any offence against this Act, whether for a penalty,

forfeiture, or misdemeanour, the offence shall be laid or alleged to have been committed in the city of London or county of Middlesex, at the option of the informer or prosecutor; and all actions, bills, suits, informations, and indictments for any offence or offences against this Act, whether filed, brought, commenced or prosecuted for a penalty or forfeiture, or for a misdemeanour, in any of His Majesty's Courts of Record at Westminster, or in the said Supreme Court, or any such mayor's court as aforesaid, shall be brought and prosecuted within six years next after the offence shall be committed, and a *capias* shall issue in the first process, and in the case of an offence hereby made punishable by any penalty or forfeiture, such *capias* shall specify the sum of the penalty or forfeiture sued for; and the person or persons sued or prosecuted for such penalty shall, on such *capias*, give to the person or persons to whom such *capias* shall be directed, sufficient bail or security, by natural-born subjects or denizens, for appearing in the court out of which such *capias* shall issue, at the day or return of such writ, to answer such suit or prosecution, and shall likewise, at the time of such appearance, give sufficient bail or security, by such persons as aforesaid, in the same court, to answer and pay all the forfeitures and penalties sued for, if he, she, or they shall be convicted of such offence or offences, or to yield his, her, or their body or bodies to prison; but if the prosecution shall be for any offence or offences against this Act punishable only as a misdemeanour, then the person or persons against whom such *capias* shall issue, being thereupon arrested, shall be imprisoned and bailable according to law as in other cases of misdemeanour' (33 Geo. III, c. 52, s. 141)

'All suits and prosecutions for anything done under or by virtue of this Act shall be commenced within the space of three years after the cause of complaint shall have arisen, or, being done in Great Britain, in the absence of any person beyond sea aggrieved thereby, then within the space of three years next after the return of such person to Great Britain' (33 Geo. III, c. 52, s. 162).

Provision
as to per-
sons sus-
pected of
dangerous
correspon-
dence.
[33 Geo.
III, c. 52,
ss. 45, 46]

120.—(1) The Governor-General in Council and the Governors in Council of Bengal, Madras, and Bombay respectively may issue warrants for securing and detaining in custody any person suspected of carrying on mediately or immediately any illicit correspondence dangerous to the peace or safety of any part of British India with any prince, rajah, zemindar, or other person having authority in India, or with the commander, governor, or president of any factory or settlement established in India by a European power, or any correspondence contrary to the rules and orders of the Secretary of State or of the Governor-General in Council or Governor in Council.

(2) If ^{Li}on examination taken on oath in writing of any credible witness before the Governor-General in Council or the Governor in Council there appear reasonable grounds for the charge, the governor-general or governor may commit the persons suspected or accused to safe custody, and must within a reasonable time, not exceeding five days, cause to be delivered to him a copy of the charge or accusation on which he is committed.

(3) The person charged may deliver his defence in writing, with a list of such witnesses as he may desire to be examined in support thereof.

(4) The witnesses in support of the charge and of the defence must be examined and cross examined on oath in the presence of the person accused, and their depositions and examination must be taken down in writing.

(5) If, notwithstanding the defence, there appear to the Governor-General in Council or Governor in Council reasonable grounds for the charge or accusation and for continuing the confinement, the person accused is to remain in custody until he is brought to trial in India or sent to England for that purpose.

(6) All such examinations and proceedings or attested copies thereof under the seal of the high court must be sent to the Secretary of State as soon as may be in order to their being produced in evidence on the trial of the person accused in the event of his being sent for trial to England.

(7) If any such person is to be sent to England the governor-general or governor, as the case may be, must cause him to be sent to England at the first convenient opportunity, unless he is disabled by illness from undertaking the voyage, in which case he must be so sent as soon as his state of health will safely admit thereof.

(8) The examinations and proceedings transmitted in pursuance of this section are to be deemed and received as evidence in all courts of law, subject to any just exceptions as to the competency of the witnesses (a).

(a) The provisions of the Act of 1793, reproduced by this section, have never been repealed. But no record has been found of any case in which they have been put into operation, and the cases which they were mainly designed to meet could probably be dealt with under other enactments. Powers of arrest and imprisonment for political offences are given by Bengal Regulation III of 1818, Madras Regulation II of 1819, Bombay Regulation XXV of 1827, Act XXXIV of 1850 (the State Prisoners Act, 1850), and Act III of 1858 (the State Prisoners Act, 1858). See *In the matter of Ameer Khan*, 6 Bengal Law Rep. 392. The Bombay Regulation was used in 1886 for the arrest of Dhuleep Singh at Aden, and has since (in 1897) been put in force in connexion with seditious proceedings at Poona.

PART XII.

SUPPLEMENTAL.

Savings.

Saving as to certain rights and powers. [3 & 4 Will. IV, c. 85, s. 51. 24 & 25 Vict. c. 67, s. 52.]

121.—(1) Nothing in this Digest derogates from or interferes with the rights vested in His Majesty, or the powers vested in the Secretary of State in Council, in relation to the Government of British India, by any law in force at the passing of the Indian Councils Act, 1861.

(2) Nothing in this Digest affects the power of Parliament to control the proceedings of the Governor-General in Council or of any local Government, or to repeal or alter any law or regulation made by any authority in British India, or to legislate for British India and the inhabitants thereof (a).

(a) These savings, reproduced from the Acts of 1833 and 1861, are important as showing that the parliamentary enactments relating to India were never intended to be and cannot be construed as a complete code of the powers and rights exercisable by or with reference to the Government of India.

Treaties, contracts, and liabilities of East India Company. [21 & 22 Vict. c. 106, s. 67.]

122.—(1) All treaties made by the East India Company are, so far as they are in force, binding on His Majesty (a).

(2) All contracts made and liabilities incurred by the East India Company may, so far as they are still outstanding, be enforced by and against the Secretary of State in Council.

(a) A treaty, unless confirmed by legislation, cannot affect private rights of British subjects in times of peace. *Walker v. Baird*, [1892] A. C. 492, 496.

123. All orders, regulations, and directions lawfully made or given by the Court of Directors of the East India Company, or by the Commissioners for the Affairs of India, are, so far as they are in force, to be deemed to be orders, regulations, and directions made by the Secretary of State under the Government of India Act, 1858.

Orders of East India Company. [21 & 22 Vict. c. 106, s. 59.]

Laying of documents before Parliament.

123A. All proclamations, regulations and rules made under the Indian Councils Act, 1909, other than rules made by a Lieutenant-Governor for the more convenient transaction of business in his Council, must be laid before both Houses of Parliament as soon as may be after they are made.

Laying of certain proclamations, &c., before Parliament. [9 Edw. VII. c. 4, s. 7.]

Definitions.

124. In this Digest the following expressions, unless the contrary intention appears, have the meanings hereby respectively assigned to them ; namely :

Definitions.

- (1) The expression ' British India ' means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India (a).
- (2) The expression ' India ' means British India together with any territories of any native prince or chief under the suzerainty of His Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India (a).
- (3) The expression ' province ' means any part of British India the executive government of which is administered by a Governor in Council, lieutenant-governor in Council, lieutenant-governor, or chief commissioner, and includes a presidency (b).
- (4) The expression ' local Government ' means a Governor in Council, lieutenant-governor in Council, lieutenant-governor, or chief commissioner (c).

(5) The expression 'high court' means a court established for some part of British India by His Majesty's letters patent (d).

(6) The expression 'Indian Civil Service' means the service so designated in the rules now in force.

(7) The expression 'office' includes place and employment.

52 & 53
Vict. c. 63. The Interpretation Act, 1889, applies to the construction of this Digest (e).

(a) The definitions of 'British India' and 'India' follow those adopted in the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and in the Indian General Clauses Act, 1897 (X of 1897, s. 3 (7), (27)).

British India corresponds to the territories which were in the Act of 1858 described as 'the territories in the possession of or under the government of the East India Company,' and which were then held by the Company in trust for the Crown.

Aden is part of British India, and is included in the Bombay presidency. See the Aden Laws Regulation, 1891 (II of 1891).

India, as distinguished from British India, includes also the territories of Native States, which used to be described in Acts of Parliament as 'the dominions of the princes and States of India in alliance with Her Majesty,' or in similar terms. See, e.g., 24 & 25 Vict. c. 67, s. 22; 28 & 29 Vict. c. 15, s. 3; 28 & 29 Vict. c. 17, s. 1; 53 & 54 Vict. c. 37, s. 15.

The expression 'suzerainty' is substituted by the Interpretation Act for the older expression 'alliance,' as indicating more accurately the relation between the rulers of these States and the British Crown as the paramount authority throughout India. It is a term which is perhaps incapable of precise definition, but which is usefully employed to indicate the political authority exercised by one State over another, and approximating more or less closely to complete sovereignty. See Holland's *Jurisprudence*, ed. 7, pp. 45, 347, and below, Chapter V.

The territories of the Native States are not part of the dominions of the King, but their subjects are, for international purposes, in the same position as British subjects. For instance, under the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37, s. 15), where an order made in pursuance of the Act extends to persons enjoying His Majesty's protection, that expression is to be construed as including all subjects of the several princes and States in India. And it is possible that a subject of a Native State would not be held to be an 'alien' within the meaning of the Naturalization Act, 1870 (33 & 34 Vict. c. 14), so as to be capable of obtaining a certificate of naturalization under that Act.

The expression 'prince or chief' seems wide enough to include the ruler or head-man, by whatever name called, of any petty tribe or clan or group, however rudimentary may be its political organization. But of course political authority may be so widely distributed among

head-men or elders, or members of the tribe or group, as to make the task of finding an individual or collective 'sovereign' very difficult. This difficulty is to some extent met by s. 2 of the Imperial Foreign Jurisdiction Act (53 & 54 Vict. c. 37).

It has sometimes been found difficult to determine whether a particular territory ought to be treated as part of British India, or of India in the wider sense, and questions have arisen as to the status of such territories as Kathiawar, Cooch Behar, and the tributary mahals of Orissa. See *Empress v. Keshub Mahajan*, (1887) I. L. R. 8 Cal. 985, and *Re Buchitramund*, (1889) I. L. R. 16 Cal. 667. The position of Kathiawar was carefully considered in two cases which came together in 1905 before the Judicial Committee of the Privy Council, *Henchand Devchand v. Azam Sakarlal Chhotamlal and The Taluka of Kolda Sangani v. The State of Gondal*. A. C. [1906] 212. Both these cases were, in effect, appeals from decisions of British political agents exercising jurisdiction in Kathiawar. It was decided (1) that Kathiawar is not as a whole within the King's dominions; (2) that the right of appeal to the King in Council from British courts exercising jurisdiction outside British dominions is not limited to British subjects; (3) that the question whether an appeal lies to the King in Council from the decision of a British political agent in Kathiawar depends on whether the jurisdiction exercised is political or judicial in its character. In the two cases in question the jurisdiction was held to be political, and the appeals were dismissed.

India in the wider sense would not include French or Portuguese territory.

The expression 'British India,' as defined above, includes the land down to low-water mark, and would ordinarily include the territorial waters of British India, though not the high seas beyond (*R. v. Edmondstone*, (1879) 7 Bom. Cr. Ca. 109). In 1871 the Bombay High Court held that the provisions of the Indian Penal Code applied to offences committed within a marine league of the shore of British India (*R. v. Kastya Rama*, 8 Bom. Cr. Ca. 63). But this decision is now affected by the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), as to which see the note on s. 101.

For fiscal and protective purposes the Indian Legislature has made laws for Indian waters. See, e.g., the Transport of Salt Act, 1879 (XVI of 1879), and the Obstructions in Fairways Act, 1881 (XVI of 1881).

The settlements of Prince of Wales Island, Singapore, and Malacca were, in pursuance of the Straits Settlements Act, 1866 (29 & 30 Vict. c. 115, s. 1), removed from British India and placed under the Colonial Office.

(b) 'Province' is defined in the Indian General Clauses Act (X of 1897, s. 3 (43)) as meaning the territories for the time being administered by any local Government.

(c) 'Local Government' is defined in the Indian General Clauses Act (X of 1897, s. 3 (29)) as meaning 'the person authorized by law

to administer executive government in the part of British India in which the Act or regulation containing the expression operates,' and as including a chief commissioner.

There are at present fifteen local Governments in British India, namely, the Governor of Bengal in Council; the Governor of Madras in Council; the Governor of Bombay in Council; the Lieutenant-Governor of Bihar and Orissa; the Lieutenant-Governor of the United provinces of Agra and Oudh; the Lieutenant-Governor of the Punjab; the Lieutenant-Governor of Burma; the Chief Commissioner of Assam; the Chief Commissioner of Delhi; the Chief Commissioner of the Central Provinces; the Chief Commissioner of British Baluchistan; the Chief Commissioner of Ajmere; the Chief Commissioner of Coorg; the Chief Commissioner of the North-West Frontier Province; and the Chief Commissioner of the Andaman Islands. Under Act V of 1868 the powers of a local Government for certain purposes may be delegated to the commissioner in Sindh.

(d) This definition only includes the chartered high courts at Calcutta, Madras, Bombay, and Allahabad, and any chartered high courts which may be established under the Indian High Courts Act, 1911. The definition in the Indian General Clauses Act (X of 1897, s. 3 (24)) is wider, and includes the various judicial commissioners and the chief court of the Punjab.

(e) In a Digest of this kind it seems convenient to adopt the same general rules of construction as are applied to recent Acts of Parliament. The application of the Interpretation Act makes the definitions of 'British India' and 'India,' strictly speaking, superfluous, but they are set out on account of their importance.

SUPPLEMENTAL NOTES.

1. Omissions from Digest.

The following enactments have not been reproduced in this Digest, on the ground of either never having come into operation, or having ceased through change of circumstances to be in operation:—

The power given by 13 Geo. III, c. 63, s. 9, for the Governor-General in Council to suspend the Government of Madras or Bombay in case of disobedience.

The express grant by 21 Geo. III, c. 70, s. 17, of jurisdiction over all inhabitants of Calcutta.

The saving in 21 Geo. III, c. 70, s. 18, for the rights of fathers of Hindu and Mahomedan families and rules of caste.

The procedure under 24 Geo. III, sess. 2, c. 25, ss. 66 and 77, for constituting a special court for the trial of Indian offenders. This machinery has never been put into force.

The provisions in 33 Geo. III, c. 52, s. 41, as to the duty of local Governments in the case of conflict between the orders of the Governor-General in Council and the orders of the Directors of the East India Company.

The provision in 33 Geo. III, c. 52, s. 70, as to forfeiture of office after absence for five years.

The requirement in 37 Geo. III, c. 142, to send to the Board for Affairs of India the forms and rules made in India as to process in the recorders' courts.

The enactments in 53 Geo. III, c. 155, ss. 42, 43, as to the control of the India Board over colleges and seminaries in India, and as to the provision to be made for public education in India.

The provision in 53 Geo. III, c. 155, ss. 85, 86, as to the precedence of civil servants.

The provisions in 6 Geo. IV, c. 85, s. 5, as to the payments to be made in the case of judges and bishops.

The provision in 3 & 4 Will. IV, c. 85, for dividing the Presidency of Fort William into two presidencies.

The provision in section 56 of the same Act for the government of Bengal by a Governor in Council.

The express power given by section 86 of the same Act to hold land in India.

2. Powers of Governor-General to grant Military Commissions.

Questions have sometimes been raised as to the power of the governor-general, either alone or in council, to grant military commissions, with command over officers and men of the regular forces, and as to the effect of commissions so granted, and as the answer to the question depends on a series of enactments and other documents, it seems worth while to state it somewhat fully.

Before the passing of the Government of India Act, 1858 (21 & 22 Vict. c. 106), the Governor-General in Council granted commissions to officers of the troops of the East India Company.

The power to grant such commissions may be presumed to have been derived from the charters and Acts relating to the East India Company.

According to Sir George Chesney (*Indian Polity*, 3rd edition, ch. vii), the first establishment of the Company's Indian army may be considered to date from 1748, when a small body of sepoys was raised at Madras, after the example set by the French, for the defence of that settlement, during the course of the war which had broken out four years previously between France and England. At the same time a European force was raised, formed of such sailors as could be spared from the ships on the coast, and of men smuggled on board the Company's vessels in England by the criminals. An officer (Major Lawrence) was appointed by a commission from the Company to command their forces in India.

In 1754 an Act (27 Geo. II, c. 9) was passed for punishing mutiny and desertion of officers and men in the service of the United Company of Merchants of England trading to the East Indies, and for the punishment of offences committed in the East Indies, and at the island of